IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 6092 of 2007
Date of decision: November 27, 2007

Madan Lal

…..PETITIONER

Versus

Smt Ram Moorti and another

…..RESPONDENTS

CORUM: **HON'BLE MR JUSTICE T.P.S.MANN**

PRESENT: Mr Raman Sharma, Advocate
for the petitioner.

T.P.S.MANN, J.

The present revision has been filed by Madan Lal-tenant against the order passed by learned Rent Controller, Ambala Cantt on 17.1.2007, whereby he was ordered to be evicted from the tenanted premises and the order passed by learned Appellate Authority, Ambala on 27.9.2007, dismissing his appeal against the aforementioned order.

Smt Ram Moorti and her son-Babu Ram, respondents herein, filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter called "the Act"), seeking ejectment of Madan Lal-petitioner from one room, situated on the ground floor of House No.4187/4, Jain Mandir Street, Ambala Saddar, Ambala Cantt. It was pleaded therein that Tara Chand was the owner and landlord of the property in question. He died on 23.2.1998. After his death, his widow Smt. Ram Moorti and son Babu Ram became the owners of the property in question. During his life time, Tara Chand had given one room on the ground floor in the property in question to Madan Lal on rent at the rate

of Rs.400/- per month. However, the tenant did not pay the rent from 1.1.1998 to 28.2.2001. Moreover, the demised premises was required by the landlords for their own use and occupation as Babu Ram was without any job and he had no suitable place to start his business. Both the landlords were not in occupation of any other building, sufficient for their requirement of starting their business, nor they had vacated any residential or non-residential building.

While opposing the ejectment petition, Madan Lal admitted that he was inducted as a tenant by late Shri Tara Chand, but according to him, the rate of rent was Rs.325/- per month, which he had been regularly paying. However, the landlords did not issue him any receipt for the same. He even tendered the rent under protest for the period from 1.3.1998 to 28.2.2001 at the rate of Rs.400/- per month and therefore, he was entitled to the refund at the rate of Rs.75/- per month. He denied that the landlords required the demised premises for their own use and occupation. He even denied that Babu Ram-landlord was un-employed or not doing any job. He was gainfully employed and did not require the premises in dispute. Even otherwise, the remaining portion of the building was sufficiently spacious and having enough accommodation beyond the needs of the landlords. It was prayed by him that the ejectment petition be dismissed.

From the pleadings of the parties, learned Rent Controller framed the following issues:

1. Whether respondent is liable to be ejected from the tenancy premises on the grounds mentioned in the petition? OPP

2. Whether tender is short? OPP

3. Whether respondent is entitled to the refund of the amount of Rs.400/- along with interest and costs to the tune of Rs.3100/- tendered in excess by him to the petitioners? OPR

4. Relief.

On the basis of evidence available on the record, learned Rent Controller held that the landlords required the tenanted premises for their own use and occupation. Further that the rate of rent was Rs.400/- per month and therefore, the tenant was not entitled to any refund for the extra amount, which he claimed to have paid under protest. Accordingly, the ejectment petition was allowed.

As mentioned above, the appeal of the tenant was dismissed and therefore, the present revision filed by him under Section 15 (6) of the Act.

As is clear from the testimony of Vijay Kumar PW-1, both the landlords had no sufficient space in their house, from where Babu Ram could do his business. Apart from the room, which was on rent with Madan Lal-tenant, the remaining portion of the house was residential, which the landlords were using for their residence and the same was not fit for any other purpose. Smt Ram Moorti also appeared as PW-2 and reiterated her averments as mentioned in the ejectment petition. These testimonies were found to be sufficient by the learned lower Rent Control Authorities to come to a conclusion that the tenanted premises was required by the landlords for their personal necessity so that Babu Ram-landlord might start his business.

Madan Lal-petitioner failed to discharge the onus put on him to establish that the rate of rent for the tenanted premises was Rs.325/- per month and not Rs.400/-per month. Therefore, he was not entitled to

seek the refund of the money, which he had paid under protest.

Learned counsel for the petitioner submitted that the building in question is a residential building and therefore, the tenanted premises could be got vacated only if the same was required by the landlords for their own occupation or for use as office or consulting room by Babu Ram, in case he intended to start practice as Lawyer, qualified Architect or Chartered Accountant which he was not. On the other hand, the landlords could not seek the ejectment of the petitioner from the tenanted premises on the ground that they needed it for Babu Ram so that he might run his business from the said premises. He has drawn the attention of the Court to Section 13 of the Act in this regard. It has further been submitted that Section 11 of the Act prohibits the owner of a residential building from using it as a non-residential building, except with the permission, in writing, of the Rent Controller.

It is true that to begin with the entire property, which included the portion of the building under the occupation of the landlords as well as the tenant, was residential, but later-on it was Madan Lal-petitioner who started using the room under his occupation for commercial purposes. Once, it is the tenant himself, who had initially taken the tenanted premises for residential purposes, but later-on converting it for using for commercial purposes, he cannot turn around to assert that the owner of the residential property should not use it as a non-residential building or that the landlords could not seek his ejectment on the ground of personal necessity so as to enable Babu Ram, one of the landlords to start his business from the tenanted premises, after seeking his ejectment.

As is clear from the site plan Ex.PW2/2, the two rooms situated on the ground floor in occupation of the landlords did not have any approach to the main road, except the main entrance and therefore, the same could not be used as a commercial property. Therefore, the requirement of the landlords for seeking ejectment of the tenant from the demised premises was justified as they needed it for their own personal use.

In view of the above, there is no merit in the revision in hand, which is hereby dismissed.

November 27, 2007 **(T.P.S.MANN)**
Pds. **JUDGE**